Supreme Court, U.S.
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No. 99-369

IN THE
Supreme Court of the United States

ALLIED SYSTEMS, LTD.,
a Georgia Limited Partnership,
Petitioner,
v.

TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTERS INDUSTRY NEGOTIATING COMMITTEE; LOCAL UNION 327 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America; DAVE HODGIN and JIMMY NEAL, its officers, agents and employees and it's members who are employed by Plaintiff Allied Systems, Ltd. at its Nashville, Tennessee facilities,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Where a collective bargaining agreement, enforceable under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185, excepts from the requirement of arbitration certain types of contract breaches by an Employer and provides that the Labor Organization retains the right to strike with respect to such contract breach, do the provisions of Section 4 of the Norris-LaGuardia Act, 29 U.S.C. § 104, which withdraw jurisdiction of the courts of the United States for the issuance of any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute, bar issuance of injunctive relief by the United States District Courts upon application by the Employer under this Court's opinion in *Boys Markets v. Retail Clerks Union*, 398 U.S. 235 (1970).

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

The parties to this proceeding include the Petitioner, Allied System, Ltd., a Georgia limited partnership, which is a wholly-owned subsidiary of Allied Automotive Group, Inc. Allied Automotive Group, Inc. is a wholly-owned subsidiary of Allied Holdings, Inc., a publicly held corporation. The Respondents are Teamsters National Automobile Transporters Industry Negotiating Committee, a labor organization affiliated with the International Brotherhood of Teamsters, AFL-CIO and Teamsters Local Union No. 327, a labor organization headquartered in Nashville, Tennessee, also affiliated with the International Brotherhood of Teamsters, AFL-CIO. The individuals named in the caption, Dave Hodgin and Jimmy [illegible], are employees and business agents of Teamsters Local Union No. 327. There are no publicly held companies related to or controlling Respondents.

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BRIEF IN OPPOSITION

Respondents Teamsters National Automobile Transporters Industry Negotiating Committee and Teamsters Local Union No. 327 respectfully pray that Petitioner Allied System Ltd.'s August 30, 1999 Petition for Writ of Certiorari seeking review of a June 9, 1999 final judgment and order of the United States Court of Appeals for the Sixth Circuit be denied.

OPINION BELOW

The decision sought to be reviewed has been reported as *Allied Systems Ltd. v. Local 327 Teamsters*, 179 F.3d 982 (6th Cir. 1999). The decision and order of the United States District Court for the Middle District of Tennessee, the Honorable Todd J. Campbell, United States District Judge, is accurately reported in Appendix B and Appendix C of Petitioner's Petition.

JURISDICTION

Respondents agree with Petitioner that all jurisdictional requisites have been complied with for review of this matter pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Respondents rely upon the statement of the facts and the case set forth in the Court of Appeals opinion *Allied System Ltd. v. Local 327 Teamsters*, 179 F.3d at 984-985. Respondents respectfully state, pursuant to Rule 15.2 of the Rules of the Supreme Court of the United States, that Petitioner Allied Systems Ltd. failed to rebut testimony of Respodents' witnesses before the United States District Court below regarding disputes over the computation of wages or application of rates. During the preliminary injunction hearing in this matter on June 11, 1998 Union negotiator Paul R. Houck testified without contradiction by Petitioner that the language of the exception to the exception to the No Strike clause at issue in this case, Article 7, Section 1(e), deals simply with day-to-day differences of opinion that arise out of disputes dealing with individual employee rates of pay. Transcript of 6/11/98 Preliminary Injunction Hearing, pp. 151-52. *See*, Petition Appendix C at Apx. 33-34.

Because Petitioner failed in its showing before the District Court below, this Petition should not be granted.

REASONS FOR DENYING THE WRIT

THE COURT OF APPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S DENIAL OF A PRELIMINARY INJUNCTION BASED UPON THE DISTRICT COURT'S APPLICATION OF THE NORRIS-LAGUARDIA ACT TO THE FACTS FOUND AT HEARING ON THIS LABOR DISPUTE

Petitioner Allied Systems Ltd. attempts to have this Court review a labor dispute claiming that the asserted ambiguity in the no-strike clause of the collective bargaining agreement at issue gives rise to a "presumption of arbitrability" most recently articulated in this Court's opinion in *AT&T Technologies v. Communications Workers*, 475 U.S. 643, 650-51 (1986). The Court of Appeals correctly rejected Petitioner's arguments by noting that ". . . no congressional policy is furthered by forcing a party to a collective bargaining agreement to arbitrate issues for which it explicitly retained the right to utilize economic weapons in labor negotiations." *Allied Systems Ltd. v. 327 Teamsters*, 179 F.3d at 987.

Further, the Court of Appeals correctly found that Petitioner's arguments amount to a petition for injunctive relief to determine the issue of whether a strike violates the no strike clause, which is prohibited under the Norris-LaGuardia Act. *Allied Systems Ltd. v. Local 327 Teamsters*, 179 F.3d at 988. *See, Buffalo Forge Co.* v. *United Steelworkers of America*, 428 U.S. 397, 409-10 (1976). *See also, Complete Auto Transit, Inc. v. Reis*, 614 F.2d 1110, 1113 (6th Cir. 1980), *aff'd* 451 U.S. 401 (1981). Such a request was properly denied.

Finally, the Petitioner has not shown any conflict between the opinions of Circuit Courts of Appeal where the two allegedly conflicting opinions, *Avco Corporation v. International Union, United Auto Workers*, 459 F.2d

968 (3d Cir. 1972), and *Southwestern Bell Telephone Co. v. Communication Workers of Am.*, 454 F.2d 1353 (5th Cir. 1972) predate this Court's analysis in *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Association*, 457 U.S. 702 (1982), *Buffalo Forge Co. v. United Steelworkers of Am.*, 428 U.S. 397 (1976) and *Gateway Coal Company v. United Mine Workers*, 414 U.S. 368 (1974) which set forth guidance for the district courts in *Boys Markets* injunction proceedings.

CONCLUSION

The petition of Allied Systems Ltd. for writ of certiorari to the Court of Appeals for the Sixth Circuit should be denied.

Respectfully submitted,

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